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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/811,845	03/19/2001	Thomas E. Chefalas	YOR920010017US1	9247

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EXAMINER
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FOWLKES, ANDRE R

ART UNIT	PAPER NUMBER
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2192

DATE MAILED: 06/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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## Office Action Summary

Application No.

09/811,845

Applicant(s)

CHEFALAS ET AL.

Examiner

Andre R. Fowlkes

Art Unit

2192

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 4/7/05.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2,7-16,21-35,40-48 and 54-61 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,7-16,21-35,40-48 and 54-61 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. This action is in response to the amendment filed 4/7/05.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 2, 7-16, 21-35, 40-48, and 54-61 are rejected under 35 U.S.C. 102(b) as being anticipated by Cole et al., (Cole), U.S. Patent No. 5,752,042.

As per claim 1, Cole discloses **a method in a server for automatically downloading and installing software to a client computer system**, (col. 1:9-10, "The invention relates generally to computer networks and deals more particularly with a technique for selecting code updates (i.e. software) stored in a server for installation in a client"), **comprising the steps of:**

- **receiving an instruction from a client computer identifying an item of software to install on the client computer system** (col. 1:60-61, "A user at the client computer selects from the list and sends the selections (i.e. instruction) to the server computer"),

**- wherein the receiving an instruction from the client computer identifying the item of software to install includes a step of receiving the instruction via one of a wireless network, a local area network, an Internet, an intranet, and a wide area network** (col. 2:35-38, "Network 10 comprises a selection server 12 with a data base 13, a content server 17, clients 14-16 and an Internet 20 to interconnect the servers and clients")

**- collecting data about the client computer system to form collected data** (col. 1:53, "determine whether the client computer has a version other than a current version of the identified code updates (i.e. collected data)"),

**- analyzing the collected data to determine the proper version and the configuration options** (col. 1:47-49, "The server computer identifies code updates (with the proper version and configuration options) which are consistent with basic system characteristics of the client computer"),

**- receiving an analysis of the collected data, wherein the analysis specifies the proper version and the configuration options** (col. 1:52-59, "recognizer programs which execute in the client computer to determine whether the client computer has a version other than a current version of the identified code updates. The client sends the results to the server computer which generates a list of code updates which are consistent with the basic system characteristics representing programs that exist on the client computer for which an update would be appropriate"),

**- based on the collected data and the analysis, determining whether the identified item of software can be installed on and executed by the client**

**computer system in response to receiving the instruction from the client**

**computer identifying the item of software to install on the client computer system**

(col. 1:52-59, "recognizer programs which execute in the client computer to determine whether the client computer has a version other than a current version of the identified code updates. The client sends the results to the server computer which generates a list of code updates which are consistent with the basic system characteristics (i.e. software that can be installed on and executed by a specific computer system) representing programs that exist on the client computer for which an update would be appropriate"),

**- if the identified item of software can be installed on and executed by the client computer system, based on the collected data and the analysis,**

**downloading the proper version of the identified item of software from the server**

(col. 1:52-59, "recognizer programs which execute in the client computer to determine whether the client computer has a version other than a current version of the identified code updates. The client sends the results to the server computer which generates a list of code updates which are consistent with the basic system characteristics representing programs that exist on the client computer for which an update would be appropriate"),

**- installing the proper version based on the collected data and the analysis, setting configuration options associated with the proper version** (col. 1:62-65, "In response, the server computer sends addresses of the selected code updates to the client computer and the client computer downloads (and installs) the selected code updates from a server computer"),

- **returning a confirmatory message** (col. 1:54-55, "The client sends the results to the server computer").

As per claim 2, the rejection of claim 1 is incorporated and further, Cole discloses that **based on the collected data, determining whether the item of software can be installed on the computer system, and if the item of software cannot, then ending execution of the method** (col. 1:52-59, "recognizer programs which execute in the client computer to determine whether the client computer has a version other than a current version of the identified code updates. The client sends the results to the server computer which generates a list of code updates which are consistent with the basic system characteristics representing programs that exist on the client computer for which an update would be appropriate").

As per claims 7-10, 12 & 13, this is another method version of the claimed method discussed above, in claims 1 and 2, wherein all claimed limitations have also been addressed and/or cited as set forth above. For example, see Cole's server computer for selecting program updates for a client computer based on results of recognizer programs furnished to the client computer (col. 2:31-6:64).

As per claim 11, the rejection of claim 10 is incorporated and further, Cole discloses that **the receiving step includes a step of receiving the instruction through a HyperText Markup Language (HTML) interface** (col. 2:47-49,

"Communications between the clients and the selection server 12 utilize hypertext transport protocol (HTTP)", and HyperText Transfer Protocol is the protocol for moving hypertext (HTML) files across the Internet).

As per claim 14, the rejection of claim 7 is incorporated and further, Cole discloses **transmitting the at least one software installation agent to the at least one computer system to be installed by a user** (col. 1:49-50, "the server computer sends to the client computer one or more "recognizer" programs(i.e. software installation agent)").

As per claims 15 and 16, this is a product version of the claimed method discussed above, in claims 1 and 2, wherein all claimed limitations have also been addressed and/or cited as set forth above. For example, see Cole's server computer for selecting program updates for a client computer based on results of recognizer programs furnished to the client computer (col. 2:31-6:64).

As per claims 21-28, this is a product version of the claimed method discussed above, in claims 1, 2, 11 & 14, wherein all claimed limitations have also been addressed and/or cited as set forth above. For example, see Cole's server computer for selecting program updates for a client computer based on results of recognizer programs furnished to the client computer (col. 2:31-6:64).

As per claims 29-32, this is a system version of the claimed method discussed above, in claims 1 & 14, wherein all claimed limitations have also been addressed and/or cited as set forth above. For example, see Cole's server computer for selecting program updates for a client computer based on results of recognizer programs furnished to the client computer (col. 2:31-6:64).

As per claim 33, the rejection of claim 29 is incorporated and further, Cole discloses that **the client computer submits the request using a HyperText Transfer Protocol (HTTP)**, (col. 2:47-49, "Communications between the clients and the selection server 12 utilize hypertext transport protocol (HTTP)").

As per claims 34 and 35, this is an apparatus version of the claimed method discussed above, in claims 1 and 2, wherein all claimed limitations have also been addressed and/or cited as set forth above. For example, see Cole's server computer for selecting program updates for a client computer based on results of recognizer programs furnished to the client computer (col. 2:31-6:64).

As per claims 40-47, this is an apparatus version of the claimed method discussed above, in claims 1, 2, 11 & 14, wherein all claimed limitations have also been addressed and/or cited as set forth above. For example, see Cole's server computer for selecting program updates for a client computer based on results of recognizer programs furnished to the client computer (col. 2:31-6:64).



As per claim 48, this is a system version of the claimed method discussed above, in claims 1 and 2, wherein all claimed limitations have also been addressed and/or cited as set forth above. For example, see Cole's server computer for selecting program updates for a client computer based on results of recognizer programs furnished to the client computer (col. 2:31-6:64).

As per claims 54-61, this is a system version of the claimed method discussed above, in claims 1, 2, 11 & 14, wherein all claimed limitations have also been addressed and/or cited as set forth above. For example, see Cole's server computer for selecting program updates for a client computer based on results of recognizer programs furnished to the client computer (col. 2:31-6:64).

#### ***Response to Arguments***

4. Applicants arguments have been considered but they are not persuasive.

*In the remarks, the applicant has argued substantially that:*

- 1) Cole does not teach determining whether the identified item of software can be installed on and executed by the client computer system in response to receiving the instruction from the client computer identifying the item of software to install on the client computer system based on the collected data and the analysis, at p. 15:3-27.

*Examiner's response:*

1) The examiner disagrees with applicant's characterization of the applied art. Cole does teach determining whether the identified item of software can be installed on and executed by the client computer system in response to receiving the instruction from the client computer identifying the item of software to install on the client computer system based on the collected data and the analysis as disclosed at col. 1:45-59, "The invention resides in server and client computers for selecting code updates to download to the client computer. The server computer identifies code updates which are consistent with basic system characteristics of the client computer. Then, the server computer sends to the client computer one or more "recognizer" programs or one or more addresses outside of the client computer of the one or more recognizer programs which execute in the client computer to determine whether the client computer has a version other than a current version of the identified code updates. The client sends the results to the server computer which generates a list of code updates which are consistent with the basic system characteristics representing programs that exist on the client computer for which an update would be appropriate" and in the art rejection, above.

*In the remarks, the applicant has argued substantially that:*

2) In the Cole system, there is no determination if the item of software selected by the user cannot be installed on and executed on the computer system.

*Examiner's response:*

2) The examiner disagrees with applicant's characterization of the applied art. The Cole system makes a determination of whether a selected item of software can be installed on and executed by a computer system at col. 1:45-59, "The invention resides in server and client computers for selecting (appropriate) code updates to download to the client computer. The server computer identifies code updates which are consistent with basic system characteristics (i.e. software that can be installed on and executed by a specific computer system) of the client computer", and in the art rejection, above.

***Conclusion***

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andre R. Fowlkes whose telephone number is (571) 272-3697. The examiner can normally be reached on Monday - Friday, 8:00am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tuan Q. Dam can be reached on (571)272-3695. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ARF

  
**WEI Y. ZHEN**  
**PRIMARY EXAMINER**